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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,337	10/09/2001	Andrew J. Sewell	00-424	6197

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EXAMINER	
KLEBE, GERALD B	

ART UNIT	PAPER NUMBER
3618	

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/973,337	SEWELL, ANDREW J.	
	Examiner	Art Unit	
	Gerald B. Klebe	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 February 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *8 and 9* is/are allowed.

6)☒ Claim(s) *1-7 and 10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

GBKlebe 1 April 04

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Amendment

1. The amendment filed 2/06/2004 under 37 CFR 1.111 has been entered. Claims 1-10 are pending in the application, independent claims 1 and 10 being amended.

Claims Objections

2. a. Applicant is advised that should claim 1 be found allowable, claim 3 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

b. Claim 5 is objected to as having duplicative recitations with claim 1 from which it depends. Specifically, in claim 5, line 2 the recitation "...said arm comprises a telescoping arm..." appears to duplicate a feature recited earlier in the claim 1 at line 4.

Claims Rejections – 35 U.S.C. Sec. 112, 2nd Para.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 in lines 4-5 recites "said extensible arm"; there is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

6. Claims 1-7 and 10 are rejected under 35 U.S.C. 102 (e) as being anticipated by Murakami et al. (US 6134816).

Murakami et al. discloses an arrangement for a work machine having an engine, comprising: (**re: claim 10**) a work machine body (refer Fig 1; item 19); a telescoping arm (item 28) connected to the machine body, the arm having an arm longitudinal axis (taken as the projection into the horizontal plane of the centerline axis of the arm); and an engine cooling apparatus (taken as a rectangular structure, not separately numbered, shown at the left side of the plan view of the engine, 25, as depicted in Fig 3) mounted to the machine body, the cooling apparatus having a longitudinal axis oriented substantially parallel to the arm longitudinal axis (refer Fig 3, where it is seen that the engine cooling apparatus (the rectangular structure, not separately numbered as seen in the plan view of Figure 3) has a top edge oriented parallel to the longitudinal axis of the arm 28 (obscured by item 27 in the view of shown in Fig 3)); and (**further re: claim 1**) wherein the arm is extensible (refer col 3, lines 31-34); and (**re: claim 2**) wherein the engine cooling apparatus comprises a radiator (considered inherent for the vehicle drive engine, 25); and wherein (**re: claims 3 and 5**) the arm comprises a telescoping arm (Fig 1, item 28; and refer col 3, lines 31-33); and wherein; (**re: claims 4 and** 5) the arm is pivotable

relative to the machine body (as shown in Fig 3, and refer col 3, lines 42-46); and wherein (**re: claim 6**) the arm longitudinal axis is offset to one side of the body longitudinal centerline (not separately shown but clearly inferred from Fig 3 as being an imaginary horizontal line extending forward and rearward transversely equidistant from the left and right tracks (18) of the work machine and the engine cooling apparatus longitudinal axis (taken as an imaginary line extending forward and rearward parallel to an edge of the radiator of the vehicle drive engine as identified in the discussion above) is offset to the other side of the body longitudinal axis (as identified in the discussion above); and wherein (**re: claim 7**) the machine body includes a rear portion (refer Fig 3) and the engine cooling apparatus is mounted to the rear portion of the machine body (as shown particularly in Fig 3).

7. Claims 1-5, 7 and 10 are rejected under 35 U.S.C. 102 (e) as being anticipated by Sorbel (US 6024164).

Sorbel discloses an arrangement for a work machine having an engine, comprising: (**re: claim 10**) a work machine body (refer Figs 1,2; item 10; where the body portion is not separately numbered); a telescoping arm (refer Fig 1, item 12 comprising the telescoping feature(s) items 14) connected to the machine body, the arm having an arm longitudinal axis (taken as the projection into the horizontal plane of the centerline axis of the arm; refer to Fig 2); and an engine cooling apparatus (taken as the radiator, 26) mounted to the machine body, the cooling apparatus having a longitudinal axis oriented substantially parallel to the arm longitudinal axis (refer Fig 2, where it is seen that the engine cooling apparatus (the radiator, shown from the top as the rectangular element, 26) has a top edge oriented parallel to the longitudinal axis of the arm 12 shown; and (**further re: claim 1**) wherein the arm is extensible (refer col 3, lines 30-34); and (**re: claim 2**) wherein the engine cooling apparatus comprises a radiator (26); and wherein (**re: claims 3 and 5**) the arm comprises a telescoping arm (14); and wherein (**re: claims 4 and** 5) the arm is pivotable relative to the machine body (refer col 3, lines 30-34); and wherein (**re: claim 7**)

the machine body includes a rear portion and the engine cooling apparatus is mounted to the rear portion of the machine body (as shown particularly in Fig 2).

8. Claims 1-5, 7 and 10 are rejected under 35 U.S.C. 102 (b) as being anticipated by Crocker (US 5924478).

Crocker discloses (Refer to Fig 3 and associated text) an arrangement for a work machine having an engine, comprising: (**re: claim 10**) a work machine body (refer Fig 3; item 20; where the body portion is not separately numbered); a telescopic arm (Refer Fig 3; where the arm, not separately numbered, is shown at the left, shown with the telescopic feature of the piston-cylinder, also not separately numbered) connected to the machine body, the arm having an arm longitudinal axis (inherent; taken as the projection into the horizontal plane of the centerline axis of the arm); and an engine cooling apparatus (taken as the radiator 14) mounted to the machine body, the cooling apparatus having a longitudinal axis oriented substantially parallel to the arm longitudinal axis (refer Fig 3, where it is seen that the engine cooling apparatus (taken as the radiator, 14, shown in solid line as the rectangle with curved corners) has a top edge that is oriented parallel to the longitudinal axis of the arm; and (**further re: claim 1**) wherein the arm is extensible (refer col 3, lines 30-34); and (**re: claim 2**) wherein the engine cooling apparatus comprises a radiator (14); and wherein (**re: claims 3 and 5**) the arm comprises a telescoping arm (shown in Fig 3 as representing the piston-cylinder combination); and wherein (**re: claims 4 and 5**) the arm is pivotable relative to the machine body; and wherein (**re: claim 7**) the machine body includes a rear portion and the engine cooling apparatus is mounted to the rear portion of the machine body (as shown in Fig 3).

9. Claims 1-2, 4, 7 and 10 are rejected under 35 U.S.C. 102 (e) as being anticipated by Anderson et al. (US 6205665 B1).

Anderson et al. discloses an arrangement for a work machine (Fig 1, item 10) having an engine (Fig 9, item 560) comprising: (**re: claim 10**) a work machine body (refer Fig 9; item 26)

a telescopic arm (596; refer Fig 10; seen to comprise two side elements left and right, noting the telescoping features of the piston-cylinder actuators shown on the left and right) connected to the machine body (refer Fig 14) connected to the machine body, the arm having an arm longitudinal axis (inherent; taken as the projection into the horizontal plane of the centerline axis running between the two side structures constituting the arm); and an engine cooling apparatus (taken as the radiator 614, seen in Fig 10 as a rectangular-parallepiped shaped structure) mounted to the machine body, the cooling apparatus having a longitudinal axis oriented substantially parallel to the arm longitudinal axis (refer Fig 11, where it is seen that the engine cooling apparatus (taken as the radiator, 614)) has a longitudinally oriented edge that is substantially parallel to the longitudinal axis of the arm (596); and (**further re: claim 1**) wherein the arm is extensible (inherent for a loader machine; and refer col 3, lines 62-64); and (**re: claim 2**) wherein the engine cooling apparatus comprises a radiator (614); and wherein (**re: claims 3 and 5**) the arm comprises a telescoping arm (shown in Fig 10 as represented by the two piston-cylinder combinations, not separately numbered); and wherein (**re: claims 4 and 5**) the arm is pivotable relative to the machine body (inherent for loader machines of the type having arms as shown in Figs 10 and 11); and wherein (**re: claim 7**) the machine body includes a rear portion and the engine cooling apparatus is mounted to the rear portion of the machine body (as shown in Figs 11, 14 and 16).

Allowable Subject Matter

10. Claims 8-9 are allowed.

Reasons for Allowance

11. The following is an examiner's statement of the reasons for allowance:

The limitations recited in the independent claim 8 of a work machine having a body having a longitudinal centerline and a telescoping work arm pivotally connected to the rear

portion of the body, the arm having a longitudinal axis located on one side of the body longitudinal axis and an engine cooling apparatus, taken as an engine cooling radiator in the form of a rectangular parallelepiped having a longitudinal axis substantially parallel to the arm longitudinal axis and located on the other side of the body longitudinal centerline from the arm longitudinal axis, clearly defines over the prior art of record and any combination that may reasonably be developed therefrom.

Response to Argument

12. Applicant's arguments with respect to claims 1 and 10 have been considered but are not persuasive. Applicant argues that the boom taught in Murakami is not, and can not be, a telescoping arm. The examiner disagrees since as stated in the rejections based on Murakami, Figure 1 clearly shows a telescoping arm (item 28).

Further, Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references. In particular, Applicant fails to argue the rejections made against the claims 1 and 10 that are based on the references of variously: Sorbel (US 6024164); Crocker (US 5924478); and Anderson et al. (US 6205665); Applicant's arguments do not show how the amendments avoid such references.

Action made Final

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

14. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, fax 703-872-9306; Mon.-Fri., 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Brian L. Johnson, Art Unit 3618, at 703-308-0885.

Note that the examiner's fax number has changed.

Official correspondence should be sent to the following TC 3600 Official Rightfax numbers as follows: Regular correspondence: 703-872-9326; After Finals: 703-872-9327; Customer Service: 703-872-9325.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gbklebe / AU 3618 / 1 April 2004

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4/1/04